

1 do at the Tech GC National Summit?

2 A. Speak about tokens, decentralized software
3 networks, and securities offerings.

4 Q. And if I understand your prior testimony,
5 you were going to be interviewed by Ms. Kivitz and
6 Mr. Ammori?

7 A. That's right.

8 Q. And who were the attendees as you
9 understood it at the Tech GC National Summit?

10 A. I think they were largely, as the name
11 sort of implies, general counsel involved in this
12 space.

13 Q. Did you, in fact, attend the Tech GC and
14 were you interviewed by Ms. Kivitz and Mr. Ammori?

15 A. I think I did. And I don't remember her
16 asking as many questions as Marvin, but the two of
17 them I think were on stage.

18 Q. And approximately how many people were in
19 attendance?

20 A. These all kind of blend together, but I
21 would guess 50 to a hundred people.

22 Q. And the attachment to the e-mail that you

1 were CC'd on lists questions that Ms. Kivitz and
2 Mr. Ammori were planning to ask you during their
3 interviews of you; is that correct?

4 A. Yeah, I think so.

5 Q. And looking at those questions, does that
6 refresh your recollection about what you learned on
7 or about October 25th, which looks like it's the
8 day before you attended the conference, about the
9 questions that they were going to ask you?

10 MR. TENREIRO: Object to form.

11 A. Yeah. Could you repeat the question? I'm
12 not sure I followed it.

13 Q. I'll try again.

14 Does seeing the attachment to Exhibit 28
15 refresh your recollection about any questions you
16 were given in advance of the interview at the Tech
17 GC National Summit.

18 A. Not really, but this looks like a set of
19 questions that might have been asked. So...

20 Q. Let me direct your attention now to
21 question 4. You'll see the question is
22 "Mr. Hinman, you made huge news in the crypto world

1 in your talk on June 14th, 2018. Thank you, thank
2 you for providing some guidance on your thinking
3 through that talk. First, can you summarize the
4 key concepts for us."

5 Do you agree with the statement that your
6 speech was huge news in the crypto world?

7 A. I think it was big news in the crypto
8 world.

9 Q. And the response that is proposed to this
10 question includes several things that have been
11 crossed out. The first one is it says "Several key
12 points, token and offering may be distinct. Token
13 may be offered in a securities offering at some
14 point and the future offerings may be
15 nonsecurities. Nonetheless, the touchstone of the
16 analysis is likely the Howey test prong regarding
17 an expectation of profits solely from the efforts
18 of others." I'm going to stop there.

19 Did you direct Mr. Seaman to delete that
20 proposed response?

21 MR. TENREIRO: I object to the form and
22 the characterization of this as a proposed

1 response.

2 A. That's right. This is not a proposed
3 response. These are, I believe, subtopics for the
4 major heading. These were additional questions
5 they were thinking of asking.

6 Q. What is your basis for your testimony that
7 you understood that these were subtopics that they
8 proposed?

9 A. Because when you read them all in context,
10 it's clear that they are sort of follow-on
11 questions. If you read No. 2, for instance, it's
12 pretty clear that's another question they're going
13 to ask.

14 Q. And focusing now on 4A --

15 A. Right.

16 Q. -- you'll see that it was deleted?

17 A. Right.

18 Q. And I will represent to you my
19 understanding is that Mr. Seaman deleted this
20 portion of the document.

21 MR. TENREIRO: What's the basis of that
22 understanding, Reid?

1 MR. FIGEL: Our review of the metadata.

2 If you look to -- depends how you present it, but
3 if you go to the second document, it says on some
4 version of it deleted by Michael Seaman.

5 MR. TENREIRO: Okay. I think there's no
6 foundation to that right now in the record, but go
7 ahead and ask the question.

8 MR. FIGEL: Let's open the native file and
9 I'll try and show you because I think it's
10 important.

11 MR. TENREIRO: Even if it is, you can ask
12 him if he directed Seaman to delete it, I mean,
13 does he remember that.

14 BY MR. FIGEL:

15 Q. Did you direct Mr. Seaman to delete these
16 subtopics?

17 A. I don't recall directing him to do that.

18 Q. Do you have an understanding as to why he
19 deleted these subtopics?

20 MR. TENREIRO: Without disclosing
21 deliberations or conversations.

22 A. I don't have a specific recollection of

1 reading the particular deletion here. I think he
2 may have been looking for a broader question rather
3 than something that was characterizing some of our
4 advice or our guidance in this area. This looks
5 very narrow and we might not have agreed with the
6 premise of the question.

7 Q. Well, do you agree that one of the key --
8 one of the key points of your June 14, 2018 speech
9 was that "The token and the offering may be
10 distinct. The token may be offered in a securities
11 offering at some point and the future offerings may
12 be nonsecurities. Nonetheless the touchstone of
13 the analysis is likely the Howey test prong
14 regarding an expectation of profit solely from the
15 efforts of others. A sufficiently decentralized
16 network token does not rely on the efforts of
17 others"?

18 MR. TENREIRO: Object to form. Do you
19 want to break that up? I mean --

20 MR. FIGEL: No.

21 MR. TENREIRO: It's impossible to answer
22 that. Go ahead.

1 MR. FIGEL: Do you disagree that that was
2 a key point of your June 14, 2018 speech?

3 MR. TENREIRO: Object to form.

4 A. I think that is too narrow a reading of
5 the speech. I think it's -- again, I think why
6 Michael may have deleted this is the premise of
7 this was that these were the key items, and I think
8 it was reducing a five-page speech or six-page
9 speech, whatever it is, to one paragraph.

10 Q. Turn the page, if you would, and go to
11 question 6.

12 A. Yeah.

13 Q. So you'll see in the portion of the e-mail
14 that's in different colors that, according to your
15 understanding, "The moderators suggested another
16 issue is that to the outside observer the SEC can
17 be opaque. With all the divisions -- different
18 divisions and offices how do you know who to call?
19 You call ten different law firms, they give you ten
20 different answers, each of them has their own
21 particular spin. It's like the white light of your
22 speech went through a prism and came out in ten

1 different colors of legal advice."

2 Let's just focus on those sentences. Do
3 you know why -- did you direct Mr. Seaman to delete
4 that portion of the proposed question?

5 MR. TENREIRO: Object to form.

6 A. I don't recall directing him to do that.
7 It's hard to tell from the way this document's
8 presented whether he added the statement "Another
9 issue is that to the outside observer is that the
10 SEC can be opaque. With all the different
11 divisions and offices how do we know who to call."
12 That looks like that's something he added. It was
13 probably trying to give me an opportunity to say
14 here's how you can get your answers -- answers to
15 questions you may have.

16 Q. Do you believe that Mr. Seaman wrote "You
17 call ten different law firms, they give you ten
18 different answers"?

19 A. No. I think that is struck out in the
20 document I have in front of me. So my guess is
21 that this is a very long three-paragraph, almost a
22 full page question, and he may have deleted it for

1 any number of reasons.

2 Q. Fair to say that the moderators believe
3 that "You call ten different law firms, they give
4 you ten different answers," correct?

5 MR. TENREIRO: I'm just going to -- Reid,
6 I'm going -- I'm going to just to note an
7 objection. Judge Netburn has ruled on your fair
8 notice defense. The focus is not on what the
9 market participants believed. It's an objective
10 test. You're skating dangerously close in my
11 opinion to opening the door to what people
12 believed, including your client. Go on if you'd
13 like.

14 MR. FIGEL: Noted.

15 Can you answer my question?

16 A. Sure. I just want to make sure -- answer
17 the question? Okay.

18 I don't know what the moderators thought
19 when they were coming up with these questions, what
20 was in their mind, if they thought It was a
21 colorful way to describe a question or ask a
22 question. I don't really know what they had in

1 their mind. It's hard for me to read somebody
2 else's mind.

3 Q. But you have no reason to believe that
4 Mr. Seaman added that portion to this document,
5 correct, "You call ten different law firms" all the
6 way down to "Ten different colors of legal
7 advice"?

8 A. No. Again, I think this was a deletion,
9 but I don't know the history of the -- of the
10 questions, who initially drafted them, who changed
11 them, but my best guess would be that Mr. Seaman
12 added the language that's in red but not struck out
13 and struck the things that are struck.

14 Q. All right. Let's go to sub A on 6.

15 A. Sub A on 6. Okay.

16 Q. Beginning with "Another issue" and ending
17 with "Different lawyers." Do you have an
18 understanding as to whether Mr. Seaman added that
19 or whether Mr. Seaman deleted that?

20 A. Again, I don't know the editorial history
21 here. So my previous statement that I think he
22 probably struck things that are marked out and

1 added things that are just in red, but I don't have
2 firsthand knowledge of that.

3 Q. All right. Same question with respect to
4 the next portion of this, "New insights are based
5 on who can get a meeting or which lawyer says they
6 know someone in the right office. There have been
7 some efforts to avoid this and to try to bring the
8 conversations on this topic into an open forum and
9 find consensus on best practice." Do you have any
10 reason to believe that Mr. Seaman added this?

11 MR. TENREIRO: Object to form.

12 A. Same answer.

13 Q. And same set of questions all the way to
14 the bottom. Any information about who added the
15 language and who deleted it?

16 A. No. Again, I think things that are in red
17 such as "Do you have plans to issue more guidance"
18 were likely added by Mr. Seaman, and other things I
19 just don't know the editorial history.

20 Q. Do you know whether there was a video
21 recording made of your remarks at the Tech GC
22 National Summit on November 26th?

1 A. I don't know.

2 MR. FIGEL: How are you doing, Ms. Court
3 Reporter?

4 THE REPORTER: I'm good. Thanks for
5 asking.

6 MR. FIGEL: We are now going to a section
7 that will be far less interesting than watching
8 paint dry.

9 (Whereupon a discussion was had
10 off the record.)
11 (Hinman Exhibit 29,
12 Exhibit 30, Exhibit 31,
13 Exhibit 32, and Exhibit 33 were
14 marked for identification.)

15 BY MR. FIGEL:

16 Q. Mr. Hinman, I'm going to show you -- I'm
17 going to show you -- I'm going to show you a
18 document that is in the script as AAA and which
19 will now be 29. The next exhibit is what's in the
20 script as BBB and which we will now mark as 30.
21 And what is now in the script as CCC and I'll ask
22 the court reporter to mark as Exhibit 31. I guess

1 I should --

2 MR. TENREIRO: The dates on the --

3 MR. FIGEL: AAA, which is now 29, is the
4 SEC's June 21st, 2021 privilege log. The document
5 that's marked as Exhibit 30 is the SEC's July 14th,
6 2021 privilege log. This document which I'll ask
7 you to mark as Exhibit 31 is the SEC's July 21st,
8 2021 privilege log.

9 MR. TENREIRO: Just to the extent there
10 was more than one on July 21st, I can't remember,
11 but for a little more clarity, it's a four-entry --
12 it's a four-entry log on July 21st.

13 MR. FLUMENBAUM: It actually says on the
14 top "SEC Privilege Log 2."

15 MR. TENREIRO: There you go, right.

16 MR. FIGEL: I have there were two
17 additional ones that you produced on the 23rd.

18 MR. TENREIRO: Right, but in terms of the
19 21st, as Marty correctly notes, this is log 2. I
20 just want a clear record. We're good.

21 MR. FIGEL: Fair enough.

22 Next I'll ask the court reporter to mark

1 what's tab MM in the file and is the SEC's
2 July 23rd, 2021 privilege log 1, and the last one
3 is in the outline as tab NN and which we will -- NN
4 in the outline and will be 33 marked as an exhibit,
5 and this is the SEC's June 23rd, 2021 privilege log
6 1.

7 MR. TENREIRO: July.

8 MR. FIGEL: July. Thanks.

9 MR. TENREIRO: I believe it's privilege
10 log 2.

11 MR. FIGEL: Do you want to state that for
12 the record?

13 MR. TENREIRO: Yeah. Just to be clear,
14 what you marked 32 is SEC privilege log 1 of
15 July 23rd, 2021. What you're marking as 33 and
16 what I'm about to hand the court reporter is SEC
17 privilege log 2, July 23rd, 2021. I'll note the
18 great care that went into formatting these
19 privilege logs as you can tell.

20 MR. FIGEL: Designed for people with far
21 better eyes than mine.

22 You don't need to deal with these. This

1 will mostly be colloquy between me and
2 Mr. Tenreiro.

3 BY MR. FIGEL:

4 Q. Mr. Hinman, if you could look at what's
5 been marked as Exhibit 29.

6 A. Sorry. I don't have numbers on mine.
7 Could you help me a little bit.

8 MR. TENREIRO: Yes, of course. This one.

9 THE WITNESS: Okay. Yes, sir.

10 Q. All right. In the middle of the page one
11 of the wider rows is an entry that says June 4th,
12 '18 at 11:11 a.m. from you to a number of people;
13 do you see that?

14 A. Yes.

15 Q. Do you recall forwarding an e-mail
16 attaching a draft of your speech to the recipients
17 identified in that row?

18 A. I don't have a specific recollection of
19 that, but this looks like that's what I did.

20 Q. And you sent it to Lucas Moskowitz and
21 Sean Memon, correct?

22 A. Yes.

1 Q. Those are SEC employees working in the
2 office of the chairman?

3 MR. TENREIRO: Object to form. Were.

4 MR. FIGEL: Fair enough.

5 A. Yes.

6 Q. Were as of June 18th?

7 A. Yes.

8 Q. June 4th, 2018. I'm sorry.

9 I believe the record's clear on this, but
10 let's make it clear. Michael Seaman, Valerie
11 Szczepanik are from the division of corporate
12 finance, correct?

13 A. Yes.

14 Q. And Brett Redfearn and Gary Goldsholle are
15 from trading and markets?

16 A. That's right.

17 Q. And Ms. Avakian and Mr. Peikin are from
18 the division of enforcement?

19 A. That's right.

20 Q. And I believe it's Ms. Jarsulic is from
21 the office of general counsel?

22 A. That's right.

1 Q. And Mr. Bartels is from the division of
2 investment management?

3 A. That's right.

4 Q. And you distributed your speech to SEC
5 employees in each of those divisions, correct?

6 MR. TENREIRO: Object to form.

7 A. Yes.

8 Q. Did you circulate the draft of your speech
9 to enable you to get reactions from these
10 individuals as to the content of your speech?

11 MR. TENREIRO: Just answer yes or no for
12 now, and then we can take it from there.

13 A. Yes.

14 Q. Do you recall whether the e-mail had text
15 in it, the cover e-mail?

16 A. I don't recall.

17 Q. Do you recall in general what you
18 specifically asked of the recipients of this e-mail
19 to do in response to the speech, the draft of the
20 speech?

21 MR. TENREIRO: Yes or no, please.

22 A. No.

1 Q. In substance were you asking them to
2 review the speech for content?

3 MR. TENREIRO: Yes or no.

4 A. I don't recall the substance of the
5 e-mail. So it's hard to know.

6 Q. Do you recall receiving a response from
7 any of the recipients to your e-mail?

8 A. I don't recall specifically receiving
9 them, but I'm sure many offered comments.

10 Q. Do you recall any of the comments you
11 received from anyone in response to your June 4th,
12 2018 e-mail?

13 A. Not specifically.

14 Q. Do you recall generally that you received
15 edits to the draft of your speech?

16 A. I believe so.

17 Q. Do you recall any of the edits?

18 A. No.

19 Q. Based on the responses you received, did
20 you form an understanding in your own mind that the
21 substance of your remarks was not inconsistent with
22 any existing or contemplated policy of any of the

1 divisions that received a copy of the speech?

2 MR. TENREIRO: Object to form.

3 A. Could you repeat the question? I'm
4 sorry.

5 MR. TENREIRO: Two negatives.

6 MR. FIGEL: I know. It's hard.

7 Q. Let me try this a different way. Did you
8 have any responses that suggested that the content
9 of your speech was inaccurate or needed to be
10 changed?

11 MR. TENREIRO: Okay. I think we're going
12 to -- I think you're getting into deliberative
13 process now, you're asking him. So we're going to
14 instruct him not to answer.

15 MR. FIGEL: Okay. That's what -- I'm
16 trying to find the line.

17 MR. TENREIRO: You found it.

18 MR. FIGEL: Okay. Good.

19 BY MR. FIGEL:

20 Q. Based on the responses you received to
21 your June 4th, 2018 e-mail, did you have any reason
22 to believe that any of the recipients of the e-mail

1 objected to you giving the speech?

2 MR. TENREIRO: Again, I'm going to
3 instruct him not to answer based on deliberative
4 process privilege and attorney-client privilege and
5 potentially other protections.

6 MR. FIGEL: All right. So trying to cut
7 through this, Mr. Tenreiro, as I understand it,
8 other than the information you've allowed him to
9 testify to, any further questions I ask with
10 respect to what Mr. Hinman asked of the recipients
11 of the speech and any response that they gave
12 you'll direct him not to answer based on
13 deliberative process privilege; is that correct?

14 MR. TENREIRO: I think that's correct, but
15 I'd have to hear the question. I mean, any
16 question you might ask, you know, you got a lot of
17 answers about did he get comments, did he receive
18 them, did he forward it. So we've allowed that.

19 The other answer to your question to me,
20 it's not just deliberative process. There's also
21 communications with commissioners or theirs counsel
22 here. So we're also asserting attorney-client.

1 MR. FIGEL: I'm just trying to see if we
2 can short-circuit the foundation we need to lay for
3 future litigation. I'm now deliberately asking
4 questions as to substantively what the responses to
5 his e-mail were. Am I correct in understanding
6 that you will instruct him not to reveal any of the
7 substance of any of the responses that he may have
8 received?

9 MR. TENREIRO: Yes.

10 MR. FIGEL: Okay.

11 MR. TENREIRO: To the extent he even
12 recalls them, but yes.

13 MR. FIGEL: Based on that representation I
14 think we have a record as to where you're drawing
15 the line.

16 BY MR. FIGEL:

17 Q. If you can answer these questions yes or
18 no. Did your e-mail seek information from any of
19 these recipients about the legal status of offers
20 and sales of certain digital assets under the
21 United States securities laws including but not
22 limited to Bitcoin, Ether, XRP, Munchie tokens,

1 Paragon, Airfox tokens, REcoin, KIM, Grams, DOW
2 tokens, and other digital assets under the
3 U.S. securities laws?

4 MR. TENREIRO: I'm going to instruct him
5 not to answer that question even yes or no. You're
6 asking him for the substance of the communications,
7 what he's asking the staff and what he's asking
8 them for. So I'm going to instruct him not to
9 answer.

10 MR. FIGEL: I'm trying to understand the
11 issue on which the deliberations were addressed.
12 In other words, there's pre-decisional and post-
13 decisional law that makes clear that certain
14 communications are subject to a privilege and
15 certain aren't. I'm trying to understand whether
16 the decision or the information he was seeking
17 is -- was made in response to what I just read,
18 which, not surprisingly, is the e-mail you sent me.

19 MR. TENREIRO: Yeah, I understand that,
20 but I think you can ask him if the commission was,
21 you know, generally deliberating the issues.

22 MR. FIGEL: I get to ask the question I

1 want.

2 MR. TENREIRO: That's true, but I get to
3 instruct him not to answer. You asked him for the
4 specifics of the conversations. So I'm going to
5 instruct him not to answer.

6 BY MR. FIGEL:

7 Q. I'll try again.

8 Mr. Hinman, did the information you
9 requested from the various recipients of the
10 June 4th, 2018 e-mail relate to the legal status of
11 offers and sales of certain digital assets under
12 the United States securities laws?

13 MR. TENREIRO: Just answer yes or no.

14 A. I'm sorry. Ask me the question again
15 because I -- that's a very broad question. So I
16 want to make sure I answer it correctly.

17 Q. The question is did the information you
18 requested from the various recipients of the
19 June 4th, 2018 e-mail relate to the legal status of
20 offers and sales of certain digital assets under
21 the United States securities laws?

22 MR. TENREIRO: At a general level, yes or

1 no.

2 A. At this point I believe it may have.
3 That's the best of my recollection.

4 MR. TENREIRO: Reid, you're asking the
5 wrong person. You know, we're asserting the
6 privilege and you can ask us to assert what we were
7 deliberating. He's not the -- he cannot answer
8 that question without actually disclosing what they
9 were discussing.

10 Q. Did the information you sought from the
11 recipients on your June 4th, 2018 e-mail relate to
12 the regulatory implications under the United States
13 securities laws of firms such as broker-dealers
14 holding Bitcoin?

15 MR. TENREIRO: I'm going to instruct the
16 witness not to answer the question.

17 MR. FIGEL: Did the information you sought
18 from the recipients of this e-mail, the June 4th,
19 2018 e-mail, relate to the application of the
20 regulatory regime of the Securities Act of 1933 to
21 various activities by issuers and underwriters?

22 MR. TENREIRO: I'm going to instruct the

1 witness not to answer.

2 MR. FIGEL: Did the information you
3 sought from the recipients of the June --

4 MR. FLUMENBAUM: On what basis?

5 MR. TENREIRO: On deliberative process,
6 attorney-client privilege, and on that last one the
7 attorney work product as well.

8 MR. FIGEL: Mr. Tenreiro, you sent us an
9 e-mail in which you identified the topics. I'm
10 readings from your e-mail. Can I assume from the
11 colloquy we've had that you'll give the same
12 instruction with respect to each of the topics
13 identified in your e-mail?

14 MR. TENREIRO: Yes. As to the basis, you
15 know, it's a deliberative process as to all of
16 them, and there might be other privileges if you
17 want to go one by one. Otherwise we can tell you.

18 BY MR. FIGEL:

19 Q. Let me direct your attention to the entry
20 just below it. It's the June 5th, 2018 e-mail from
21 Sean Memon to Jay Clayton and Lucas Moskowitz; do
22 you see that?

1 A. Yes.

2 Q. You were not copied on that e-mail, as far
3 as you know?

4 A. As far as I know.

5 Q. Mr. Memon was Mr. Clayton's chief of
6 staff; is that correct?

7 A. At this point he was I believe his deputy
8 chief of staff.

9 Q. And who is Mr. Moskowitz?

10 A. At that time chief of staff.

11 Q. Did you have any communications with
12 anyone in the office of the chairman about a
13 speech -- a draft of the speech you delivered on
14 June 14, 2018?

15 MR. TENREIRO: Just answer yes or no,
16 please.

17 A. Yes.

18 Q. Who did you have communications with?

19 A. In the chairman's office?

20 Q. Yes.

21 A. These three people.

22 Q. All right. Let's start with Chairman

1 Clayton. Did you have direct communications, oral
2 communications with Chairman Clayton about the
3 content of the draft of your speech?

4 MR. TENREIRO: Go ahead, yes or no.

5 A. Yes.

6 Q. When was the first such communication?

7 A. I don't recall the first.

8 Q. Do you recall any reactions Chairman
9 Clayton had to your speech?

10 MR. TENREIRO: Just answer yes or no.

11 A. Yes.

12 Q. What were they?

13 MR. TENREIRO: Do not answer that question
14 on the basis of deliberative process and attorney-
15 client.

16 MR. FLUMENBAUM: What's the attorney-
17 client portion?

18 MR. TENREIRO: He's -- you know, he's the
19 attorney for the commission, he's talking to one of
20 the members of the commission, and they're
21 discussing legal matters that might arise in
22 connection with the commission's, you know, mission

1 and statements.

2 MR. FIGEL: Did you receive any edits or
3 suggestions from Chairman Clayton about the content
4 of your draft speech?

5 MR. TENREIRO: Just answer yes or no,
6 please.

7 A. Yes.

8 Q. What were they?

9 MR. TENREIRO: I'll instruct the witness
10 not to answer on the basis of deliberative process
11 and attorney-client.

12 MR. FIGEL: Did you accept any edits that
13 Chairman Clayton made?

14 MR. TENREIRO: Answer yes or no.

15 A. Yes.

16 Q. Which edits did you accept?

17 MR. TENREIRO: I'm going to instruct the
18 witness not to answer on the same basis as before.

19 MR. FIGEL: Based on your communications
20 with Chairman Clayton, did you reach an
21 understanding as to whether Chairman Clayton
22 objected to you delivering the speech on June 14,

1 2018?

2 MR. TENREIRO: Object to form and instruct
3 the witness to answer yes or no if you can.

4 A. Okay. Could you repeat it again, then.

5 Q. Based on your communications with Chairman
6 Clayton, did you reach an understanding as to
7 whether Chairman Clayton objected to your
8 delivering the speech on June 14, 2018?

9 A. Yes.

10 Q. And what was that understanding?

11 MR. TENREIRO: Instruct the witness not to
12 answer on the basis of deliberative process.

13 MR. FIGEL: Without revealing your
14 communications with Chairman Clayton, did you have
15 an understanding that you were permitted to deliver
16 the speech on June 14, 2018?

17 MR. TENREIRO: Object to form.

18 A. There was nothing he told me that said
19 don't do the speech. So Jay didn't give me, you
20 know, permission to give a speech.

21 Q. Fair to say you would not have given the
22 speech if you thought Chairman Clayton didn't want

1 you to give the speech?

2 MR. TENREIRO: Object to form.

3 A. If Jay had said something about not
4 providing the speech, I would have tried to find
5 out why he felt that way and we'd have a good
6 discussion about it.

7 Q. And did you have any such discussions with
8 Chairman Clayton in response to any concerns you
9 had as to whether he was not in favor of you giving
10 the speech on June 14, 2018?

11 MR. TENREIRO: Object to the form, there's
12 no foundation for that question, and also instruct
13 the witness not to answer yes -- to only answer yes
14 or no. Did you have any discussions I think.

15 A. Yes.

16 MR. FIGEL: Mr. Tenreiro, just so we have
17 a clear record, I can show various e-mails in which
18 his speech was circulated among members of the
19 chairman's office, including by members of the
20 division of corporate finance. I assume that if I
21 were to ask him any questions about what the topics
22 were, the policies that were being discussed in

1 those e-mails, you would give the instruction for
2 him not to answer.

3 MR. TENREIRO: Where did you get those
4 e-mails? What e-mails are you talking about? You
5 can show him entries on the privilege log.

6 MR. FIGEL: I don't want to spend
7 everybody's time going down a bunch of entries. I
8 just want to have a clear record that if I were to
9 ask him the questions about communications between
10 himself or other people in the division of
11 corporate finance and the chairman's office with
12 respect to his speech you will give the same
13 instruction as you've given in the past with
14 respect to the substance?

15 MR. TENREIRO: With respect to the
16 substance we will instruct him not to answer or
17 reveal the substance of what's in the e-mails,
18 correct.

19 BY MR. FIGEL:

20 Q. All right. Director Hinman, now focus
21 your attention on the period of time after you
22 deliver your speech. You're off the podium, you're

1 done. Did you have any communications with
2 Chairman Clayton after you delivered your speech?

3 MR. TENREIRO: Let's start with a yes or
4 no.

5 A. Yes.

6 Q. When was the first communication you had
7 with Chairman Clayton?

8 A. I don't recall. This speech was in
9 San Francisco. He was in D.C.

10 Q. What's the first instance you remember
11 having a direct communication with Chairman Clayton
12 through any media about the content of your speech?
13 I'm sorry. About the delivery of your speech?

14 A. I don't have a specific recollection of a,
15 you know, first conversation about it. I really
16 couldn't tell you.

17 Q. Did Chairman Clayton provide any reaction
18 to the speech that you delivered on June 14, 2018?

19 MR. TENREIRO: Let's start with yes or no,
20 please.

21 A. I think so.

22 Q. What did he tell you?

1 MR. TENREIRO: So let's -- let's be
2 careful here to not disclose deliberations about
3 policy or things the commission might be
4 considering. I think he's asking you for reactions
5 generally, and you can answer that if that's what
6 the question is.

7 A. I generally recall positive reactions.

8 Q. Do you recall what about your speech he
9 thought was positive?

10 MR. TENREIRO: There I'm going to instruct
11 you not to answer.

12 Q. Did Chairman Clayton tell you in substance
13 that your speech was an effective communication of
14 commission policy?

15 MR. TENREIRO: Go ahead. Answer, please.

16 A. Did he tell me that it was an effective
17 communication of commission policy? I don't recall
18 him using those words.

19 Q. In substance did he tell you that he
20 thought your speech accurately reflected commission
21 policy with respect to the issue of whether Ether
22 was a security?

1 MR. TENREIRO: Just answer yes or no.

2 A. I don't recall him saying that.

3 Q. Do you recall anything more that he told
4 you that caused you to believe that he had a
5 positive reaction to your speech?

6 MR. TENREIRO: Answer yes or no.

7 A. Yes.

8 Q. What else do you recall that he told
9 you?

10 MR. TENREIRO: So, again, let's just -- at
11 a general level, let's start there.

12 A. I think he said nice job basically, good
13 job with the speech.

14 Q. And did you have communications with
15 Chairman Clayton beyond good job, positive
16 reaction? In other words, did you discuss any of
17 the substantive issues with Chairman Clayton after
18 you delivered your speech?

19 MR. TENREIRO: Let's start with yes or
20 no.

21 A. Well, that's a very open-ended question.
22 So did I ever talk to Jay about some of the topics

1 that were covered in the speech after the speech?

2 Yes.

3 Q. What were those communications?

4 MR. TENREIRO: I'm going to instruct you
5 not to answer the question.

6 MR. FIGEL: The basis?

7 MR. TENREIRO: Deliberative process,
8 attorney-client, and attorney work product.

9 MR. FIGEL: With respect to the
10 communications from Chairman Clayton that you
11 remember, what was the policy or agency
12 determination that those communications related to?

13 MR. TENREIRO: Wait a second. Reid, we
14 can go through this, but there's two -- your
15 question was very broad at the beginning. Are you
16 still asking him about conversations about the
17 speech such as Clayton's reactions, or are you
18 asking him, you know, to the extent this speech
19 talks about Howey and its application to digital
20 assets did he talk to him about that subject
21 matter?

22 MR. FIGEL: Mr. Tenreiro, you're putting

1 me in a position where I have to ask 20 questions.
2 I'm now asking if he recalls additional
3 conversations. Now I'm trying to figure out what
4 they're about and whether you'll permit him to
5 reveal them.

6 MR. TENREIRO: I have to -- for me to know
7 whether I can permit him to reveal them I just have
8 to understand if he recalls additional
9 conversations about what? Could you ask the
10 question again.

11 MR. FIGEL: Any of the issues that he
12 discussed in his speech on January 14, 2018.

13 MR. TENREIRO: Okay. So did you have
14 any -- go ahead, yes or no.

15 A. Yes.

16 Q. Tell me what those communications were.

17 MR. TENREIRO: I'm going to instruct him
18 not to answer on the basis of deliberative process,
19 attorney-client, and attorney work product.

20 MR. FIGEL: All right. And I assume you
21 will give the same instruction if I ask him whether
22 any of the communications he had with Chairman

1 Clayton related to any of the topics that you
2 identified for us in your e-mail?

3 MR. TENREIRO: I will give him that
4 instruction. If you ask him, you know -- maybe I
5 can ask him later if the commission was working on
6 other matters, he can answer that question yes or
7 no.

8 MR. FLUMENBAUM: Are you suggesting that
9 Mr. Hinman is acting as counsel to Mr. Clayton?

10 MR. TENREIRO: I'm not. He's acting as
11 counsel to the commission.

12 MR. FLUMENBAUM: He's acting as counsel to
13 the commission?

14 MR. TENREIRO: And also counsel to the
15 division of enforcement, you know, to the extent
16 that they consult with him and they obtain
17 information --

18 MR. FLUMENBAUM: As director of corp fin
19 he's acting as counsel?

20 MR. TENREIRO: The division of enforcement
21 is counsel to the commission. We collect facts and
22 we collect advice from other people just like

1 lawyers do, and those are all protected by
2 attorney-client communications.

3 MR. FLUMENBAUM: You're claiming
4 privilege -- attorney-client privilege between
5 conversations with Mr. Hinman and Mr. Clayton, and
6 I don't see who the lawyer is in that situation.
7 Who's the lawyer?

8 MR. TENREIRO: They're both lawyers.

9 MR. FLUMENBAUM: I understand they happen
10 to be both lawyers, but they're not functioning as
11 lawyers.

12 MR. TENREIRO: They are functioning as
13 lawyers. They are functioning as lawyers. They're
14 collecting information and they advise their
15 client, the commission.

16 MR. FIGEL: Mr. Tenreiro, I'm trying to
17 explore with Mr. Hinman through you what the
18 particular policy or agency action you believe
19 these communications related to that you're
20 instructing him not to reveal.

21 MR. TENREIRO: And I'm going to instruct
22 him not to reveal. I think if you want to explore

1 that there's other means to explore that, including
2 through me separate from this deposition, including
3 through, you know, what our office of the general
4 counsel might say, et cetera. I think he's not the
5 person with which to explore that because the
6 problem is you're tying the conversations he's
7 having about the substance of things as they might
8 relate to specific things we're considering. So
9 you're going straight to the heart of the
10 deliberative process.

11 MR. FIGEL: Well, just for the record,
12 Mr. Hinman knows what those communications are. I
13 suspect you don't and I certainly don't. He's in
14 the best position to testify whether those
15 communications related to any of the topics that
16 you identified on your e-mail.

17 Now if you're instructing him --

18 MR. TENREIRO: He doesn't know my e-mail.

19 MR. FIGEL: Well, I read it to him. If
20 you're instructing him not to answer any of those
21 questions, we have our record. I just want to make
22 sure that that's what the instruction is and that

1 the record's clear.

2 MR. TENREIRO: I think that is the
3 instruction. As I said, you can get at it in other
4 ways. You're just asking it in a way that's
5 getting into the deliberative process. If you want
6 to talk about whether the commission is discussing
7 or deliberating other matters in this space, I
8 think you can ask it like that separately and not
9 tie it to the substance of these documents.

10 Why don't we take a break and see if we
11 can clean that up. That would be my suggestion.

12 MR. FIGEL: Sure. Let's go off the
13 record.

14 THE VIDEOGRAPHER: Off the record at
15 4:35.

16 (A short break was had.)

17 THE VIDEOGRAPHER: Back on the record at
18 4:53.

19 MR. TENREIRO: So before we went off the
20 record I just want to clarify, to the extent it
21 wasn't already clear, what the basis of our
22 objections are here. You know, you're asking him

1 to testify about a privilege log he did not
2 prepare, about documents he has not seen of late or
3 that he does -- that he's said he has no
4 recollection about, and you're asking him to talk
5 about conversations that he doesn't recall, and
6 then you're tying that into trying to figure out
7 what issues the commission was deliberating after
8 the speech was given that might relate to or touch
9 on things discussed in the speech and digital
10 assets very generally.

11 As I mentioned before the break, you can
12 ask him whatever question you want as you said, but
13 you're free to ask him to tell you generally what
14 sorts of issues the SEC was discussing and we'll
15 let him answer that. Beyond that we'll instruct
16 him not to answer to the extent you're trying to
17 tie a specific conversation in one of these logs
18 that he doesn't remember, hasn't seen to a specific
19 issue. That's our position.

20 MR. FIGEL: Let's go off the record.

21 THE VIDEOGRAPHER: Off the record at

22 4:54.

1 (A short break was had.)

2 THE VIDEOGRAPHER: Back on the record at
3 5:18.

4 MR. FIGEL: In order to try and clarify
5 our areas of disagreement, when Mr. Hinman gave his
6 speech on June 14th, 2018 was there a decision as
7 to whether current offers and sales of Ether were
8 securities -- were not security transactions?

9 MR. TENREIRO: Sorry. You're you asking
10 me?

11 MR. FIGEL: I'm asking the commission what
12 their position is. Was there a decision on the
13 date of his speech that current offers and sales of
14 Ether were not securities transactions?

15 MR. TENREIRO: His view, Mr. Hinman's view
16 as of that date was that offers and sales of Eth
17 were not securities transactions.

18 MR. FIGEL: And was that a decision --

19 MR. TENREIRO: By Mr. Hinman, yes.

20 MR. FIGEL: All right. Was that a
21 decision by the commission --

22 MR. TENREIRO: No.

1 MR. FLUMENBAUM: And you would not allow
2 him to answer any questions about communications
3 post speech involving whether sales of Ether was or
4 was not a security?

5 MR. TENREIRO: To the extent they're
6 deliberative pre-decisional, that's correct.

7 MR. FLUMENBAUM: Only talking post speech.

8 MR. TENREIRO: Yes. Yes, to the extent
9 they're after the speech but they're still
10 deliberative and pre-decisional as to other issues
11 including whether --

12 MR. FLUMENBAUM: I'm limiting it
13 specifically to the Ether issue.

14 MR. TENREIRO: That's right. So to the
15 extent there's conversations after the speech that
16 are deliberative and decisional -- and
17 pre-decisional as to the issue of Eth, we would not
18 allow him to answer. And again, just to be clear,
19 it might be related to other decisions as well.

20 MR. FLUMENBAUM: And -- and that would be
21 conversations that he may have -- may or may not
22 have had throughout his tenure -- rest of his

1 tenure as director of corp finance. There's no end
2 to that claim of deliberative process, correct, on
3 that specific issue?

4 MR. TENREIRO: On the Eth point the answer
5 is yes, there is no end, and I would encourage you
6 to ask him if that issue was generally still being
7 deliberated and he'll tell you a yes or no. If you
8 want to ask him that, you can ask him that.

9 MS. FITZPATRICK: I just want to clarify,
10 Marty. I think you said conversations generally.
11 I don't have Livenote. Conversations with third
12 parties are obviously different. You're
13 assuming --

14 MR. FLUMENBAUM: Yeah. I'm excluding
15 that.

16 MS. FITZPATRICK: -- not internal --

17 MR. FLUMENBAUM: I'm talking about --

18 THE REPORTER: Guys, one at a time.

19 MR. FLUMENBAUM: Yes, I agree with you on
20 that.

21 MS. STEWART: Can I also just read into
22 the record from paragraph 13 of Director Hinman's

1 declaration which says "To the best of my
2 knowledge, the commission had not taken at that
3 time and still has not taken any position or
4 expressed a view as to whether offers and sales of
5 Ether constituted offers and sales of securities."

6 MR. TENREIRO: So I think Ms. Stewart's
7 point, I'll state it more bluntly, Reid. It's
8 almost 6:00, you've had hours, and you've had that
9 in the record before today and you had it before we
10 even had the motion to quash. So I really hope you
11 didn't bring him here just so that we can get on
12 the record what was already on the record. Let's
13 go on. Do you have other questions about our
14 position?

15 MR. FIGEL: Yes. When Mr. Hinman gave his
16 speech on June 14th, 2018 was there a decision as
17 to whether current offers and sales of Bitcoin
18 were -- were not securities transactions?

19 MR. TENREIRO: By him, yes.

20 MR. FIGEL: And by the commission?

21 MR. TENREIRO: No.

22 MR. FIGEL: By the agency. I don't mean

1 by the commissioners.

2 MR. TENREIRO: Yeah. I mean, I think
3 we've stated this in the record before. I think
4 there's been statements put out there by people who
5 work at the SEC about their views on the status of
6 Bitcoin sales, but as we've also told you in the
7 meet and confer process and discovery, the SEC has
8 never made a final determination as to the SEC's
9 position on the application of the federal
10 securities laws registration requirements to
11 transactions in Bitcoins as tokens.

12 MR. FLUMENBAUM: So that would mean you
13 would invoke the deliberative process privilege if
14 we questioned him about conversations about Bitcoin
15 post speech with Mr. Clayton or any other member of
16 the SEC?

17 MR. TENREIRO: Yes.

18 MR. FIGEL: Why don't we go off the record
19 for a second.

20 MR. TENREIRO: Okay.

21 THE VIDEOGRAPHER: Off the record at 5:22.

22 (A short break was had.)

1 THE VIDEOGRAPHER: Back on the record at
2 5:25.

3 (Hinman Exhibit 34 was marked
4 for identification.)

5 BY MR. FIGEL:

6 Q. I'm now going to show you a document
7 that's marked in the materials as KKK, and I will
8 ask the court reporter to mark as I believe it's
9 34.

10 THE REPORTER: Correct.

11 (Witness reviewing document.)

12 BY MR. FIGEL:

13 Q. Have you had a chance to review that?

14 A. Quickly.

15 Q. You'll see that the cover e-mail that
16 bears Bates 5805 appears to be an e-mail from
17 Kristin Smith, Blockchain Association, to
18 Mr. Seaman and to you; do you see that?

19 A. Yes.

20 Q. Do you recall receiving this e-mail?

21 A. No.

22 Q. Do you recall receiving in any form the

1 attachment to the e-mail?

2 A. No.

3 Q. Are you familiar with the Blockchain
4 Association?

5 A. Not very.

6 Q. According to their Website they claim that
7 they're one of the "Leading advocacy groups in the
8 digital asset space whose goal is to improve the
9 public policy environment so that blockchain
10 networks will thrive in the United States."

11 Does that refresh your recollection at all
12 as to what the Blockchain Association is?

13 A. It sounds like a trade association.

14 Q. And they refer to themselves as the
15 unified voice of the blockchain in cryptocurrency
16 industry?

17 A. Okay.

18 Q. Does it refresh your recollection?

19 A. Just -- just that someone active in the
20 space. I don't really know them very well.

21 Q. And if you see the attachment, they sent a
22 document that bears the caption the "Hinman token

1 standard, a reasonable framework for determining
2 when tokens are and are not securities." Do you
3 agree that your June 14th, 2018 speech announced a
4 Hinman token standard?

5 A. I guess people have called it that. I
6 didn't intend it for to be called the Hinman
7 standard.

8 Q. Putting aside the label, did you
9 understand that people would view your speech as
10 having announced a framework by which the division
11 of corporate finance would determine when tokens
12 are and are not securities?

13 A. The speech and other guidance was intended
14 to share more generally the framework that the
15 division was using in thinking about these assets.

16 Q. Did you disagree with the substance of
17 what is reflected in the attachment, which is your
18 speech announced a new framework for determining
19 when tokens are and are not securities?

20 MR. TENREIRO: Object to form.

21 A. Do I disagree that it announced a new
22 framework? I think I would quibble with that a

1 little bit. I think that's a framework many folks
2 were using at the time.

3 Q. After your speech did third parties come
4 to the division of corporate finance and argue that
5 a digital transaction was not a security based on
6 the factors outlined in your speech?

7 A. They would cite the factors and other
8 factors.

9 Q. Did you accept that the factors set out in
10 your speech was the criteria by which the division
11 of corporate finance would evaluate whether a
12 digital asset transaction was a security?

13 A. Generally.

14 Q. And what do you mean by generally?

15 A. There are other factors that may be
16 relevant that are not in the framework, things that
17 are more derived from the Gary Plastic case, for
18 instance.

19 Q. Well, the factors that you outlined in
20 your speech that the Blockchain Association viewed
21 as the Hinman token standard was a new framework
22 that the division of corporate finance announced

1 through you and your speech, correct?

2 MR. TENREIRO: Objection to form. He
3 already answered no to that question.

4 A. I think, again, it was the first time that
5 particular framework was published. So you could
6 call it a new publication, but I think the
7 framework itself, the principles underlying the
8 framework have been well known for a long time.

9 Q. And following the speech the division of
10 corporate finance applied the framework that you
11 announced on June 14th in connection with their
12 evaluation of whether digital asset transactions
13 were securities, correct?

14 A. Generally, but not always.

15 (Hinman Exhibit 35 and
16 Exhibit 36 were marked for
17 identification.)

18 BY MR. FIGEL:

19 Q. So I'm now showing you what is in the
20 outline as PPP and which I will ask the court
21 reporter to mark as Exhibit 35. In light of the
22 concern about the time I'm going to also show you

1 what's in the outline as QQQ and which I'll ask the
2 court reporter to mark as Exhibit 36.

3 (Witness reviewing document.)

4 A. Okay.

5 Q. You're not on Exhibit 35, but have you
6 seen that document?

7 A. I don't remember seeing that e-mail.

8 Q. And the attachment, do you recall seeing
9 that document?

10 A. I don't.

11 Q. All right. You'll see on
12 Exhibit 35 -- let me back up. Do you know Robert
13 Cohen in the division of enforcement?

14 A. I do know Rob, yes.

15 Q. And who is he?

16 A. At the time I think he was, you know, a
17 staff member in enforcement. He may have -- I
18 don't know the exact date, but there was a crypto
19 asset group and Rob may have been heading it at
20 that point.

21 Q. And you'll see in the e-mail there's a
22 reference to setting up a potential meeting. Did

1 you attend a meeting with Mr. Cohen and Ms. Johnson
2 and Mr. Rosenblum?

3 A. I don't think so.

4 Q. To your knowledge, did anyone from the
5 division of corporate finance attend a meeting with
6 Ms. Johnson, Mr. Rosenblum, and --

7 A. I don't know.

8 Q. Let's go to tab 36, and if you could take
9 a look at the page here that ends in 2983. In
10 outline form it's direct your attention to D1.

11 A. B1.

12 Q. D as in David.

13 A. I'm probably on the wrong page. Give me
14 the page number again.

15 Q. The Bates is 2983.

16 A. Okay.

17 Q. And the portion of the outline is the --
18 is D and D1, D and Romanette 1.

19 A. My 2983 is -- okay. So it's 85. Oh, 85
20 on mine.

21 MR. TENREIRO: There's two Bates. That's
22 why it's confusing him. I think it's from where it

1 says "From a petitioner's perspective," right?

2 MR. FIGEL: Correct. As I understand
3 your --

4 A. All these pages are 83 except for the
5 specific page you're trying to get to is 85.

6 Q. I believe the way the SEC produces
7 documents is the top one suggests a number that is
8 posted on all things that are connected, and then
9 the one below it is the sequential number.

10 MR. TENREIRO: Your guess is as good as
11 mine.

12 A. I think it's the other way around, but
13 that's okay.

14 Q. If you could just read into the record D
15 and Romanette 1.

16 A. "From a practitioner's perspective the
17 situation in the cryptocurrency markets is
18 extremely unusual. Token issuers can speak to two
19 different well-regarded experienced law firms and
20 get diametrically opposite views on the current and
21 future applicability of federal securities laws and
22 what steps the token issuer needs to take to engage

1 in a compliant token offering."

2 Did you learn from any source on or about
3 October 23rd, 2018, you know, within weeks that
4 Ms. Johnson and Mr. Rosenblum had informed
5 Mr. Cohen in substance of the information you just
6 read?

7 A. I don't remember ever hearing about that.

8 Q. If you could read D Romanette 3-2 into the
9 record, please.

10 A. "This is not normal and, in fact, this is
11 largely unprecedented in our experience."

12 Q. Go down to 2, if you would.

13 A. You want me to read the --

14 Q. Yeah. "Lawyers, law firms, and other
15 gatekeepers."

16 A. So not the general one, the other one?
17 Okay.

18 "Lawyers, law firms, and other
19 gatekeepers, however, do not typically disagree on,
20 for example, whether federal securities laws apply
21 at all or what analysis is for determining
22 whether -- or what the analysis is for determining

1 whether instruments are securities."

2 Q. Did you learn from any source on or about
3 October 23rd, 2018 that Ms. Johnson and
4 Mr. Rosenblum had expressed this view to Mr. Cohen
5 and others?

6 A. I don't recall that, no, I don't think I
7 did.

8 MR. FIGEL: Can we go off the record for a
9 second.

10 THE VIDEOGRAPHER: Off the record at 5:39.

11 (A short break was had.)

12 THE VIDEOGRAPHER: Back on the record at
13 5:45.

14 EXAMINATION

15 BY MR. FLUMENBAUM:

16 Q. Good afternoon, Mr. Hinman.

17 A. Hi.

18 Q. I'm going back to the privilege logs that
19 Mr. Figel introduced. They reflect that you sent
20 your speech to Mr. Clayton, correct?

21 A. Among others, yes.

22 Q. Did you send them to any other

1 commissioner other than Mr. Clayton?

2 A. Not that I recall.

3 Q. Did you care one way or the other what the
4 other commissioners thought about your speech?

5 MR. TENREIRO: Objection to form.

6 A. Did I care, yes.

7 Q. Why didn't you send the speech to the
8 other four commissioners?

9 MR. TENREIRO: Without discussing
10 deliberations, but I think you can answer that.

11 A. Usually if we would provide a speech or
12 something to the other commissioners it could slow
13 the process down pretty significantly.

14 Q. Slow your speech making process?

15 A. The review process.

16 Q. The review process for your speech?

17 A. Yes.

18 Q. So you didn't want to slow down your
19 review process for your speech even though you were
20 making significant statements about Ether and
21 Bitcoin in your speech?

22 MR. TENREIRO: Objection to form.